



# CHIEF JUSTICE'S RULES ADVISORY COMMISSION MINUTES OF MEETING

November 15, 2019

North Carolina Judicial Center, Room A1101  
901 Corporate Center Drive  
Raleigh, NC 27607

## **Call to Order**

A meeting of the Chief Justice's Rules Advisory Commission (CJRAC) was called to order at 2:00 p.m. on Friday, November 15, 2019, in the Executive Boardroom at the Judicial Center by North Carolina Court of Appeals Judge Donna Stroud, Commission Chair.

### Commission Members in Attendance:

Ann Anderson, *Associate Professor*, UNC School of Government  
Mark Anderson, *Partner*, McGuireWoods LLP  
Mark Holt, *Partner*, Holt Sherlin LLP  
Mike Mitchell, *Attorney*, Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP  
Kellie Myers, *Trial Court Administrator*, Wake County  
John Rabiej, *Deputy Director*, Bolch Judicial Institute, Duke University School of Law (by phone)  
Christine Walczyk, *District Court Judge*, Wake County

### Commission Members Not in Attendance:

Trey Allen, *Associate Professor*, UNC School of Government  
Pamela Hill, *Clerk of Superior Court*, Randolph County  
Paul Ridgeway, *Senior Resident Superior Court Judge*, Wake County  
Andrew Tripp, *Chief of Staff*, Office of Senate President Pro Tempore Phil Berger

### Other Attendees:

Grant Buckner, *Administrative Counsel*, Supreme Court of North Carolina  
Seth Ascher, *Assistant Administrative Counsel*, Supreme Court of North Carolina  
Betse Hamilton, *Office of Administrative Counsel*, Supreme Court of North Carolina

## Approval of Minutes

The minutes from the October 24, 2019 meeting were approved, as written.

## Legislative Update

Andrew Simpson, Chief Counsel for Policy and Intergovernmental Affairs for the North Carolina Judicial Branch, provided a legislative update and handouts concerning North Carolina Session Law 2019-243 (House Bill 470), which was signed into law on November 6, 2019, by Governor Roy Cooper. Part I, Section 3.(a), of the session law amends N.C.G.S. § 7A-49.5, "Statewide electronic filing in courts," by adding the following language:

*(b1) The Supreme Court shall promulgate rules authorizing electronic filing and electronic signatures in the General Court of Justice. The rules shall require registration to participate in electronic filing and provide security procedures that include a mandatory submission of a form of identification to electronically file pro se.*

Part I, Section 3.(b), provides:

*No later than March 1, 2020, the Administrative Office of the Courts shall report the rules promulgated pursuant to G.S. 7A-49.5(b1) to the Joint Legislative Oversight Committee on Justice and Public Safety.*

John Rabeij shared that in federal courts pro se filers need approval by the court to register for the electronic-filing system.

Mr. Simpson indicated that he would obtain for the Commission the following:

- A memo from Tyler Technologies, the vendor selected to implement AOC's new integrated case management system, about the types of identification required in other states to electronically file pro se.
- Counsel from the General Assembly's Legislative Analysis Division as to how it interprets the amended language in N.C.G.S. § 7A-49.5.

## Rules of Civil Procedure Subcommittee

Mike Mitchell, Subcommittee Chair, gave a brief report of the subcommittee's work.

Mr. Mitchell distributed a handout with a comparison of Rule 5 of the North Carolina Rules of Civil Procedure, "Service and filing of pleadings and other papers," with Rule 5 of the Federal Rules of Civil Procedure, "Serving and Filing Pleadings and Other Papers." As a starting point for discussion, Mr. Mitchell also distributed a handout with a proposed rule for electronic filing, which is proposed to be incorporated into the General Rules of Practice.

Professor Ann Anderson, subcommittee member, commented that Rule 3, Rule 4, Rule 5, Rule 6, and Rule 58 of the North Carolina Rules of Civil Procedure will need to be reviewed for possible amendment.

The Rules of Civil Procedure will need to be amended to accommodate electronic service of Rule 5(d) documents.

A consensus was reached that AOC's eCourts initiative affects more than civil procedure. Grant Buckner agreed to investigate what is being done to prepare for eCourts in, for example, the world of criminal procedure. Grant Buckner will report back to the Commission with more information at its next stated meeting.

Professor Anderson offered to meet with Brad Fowler, Chief Business Officer for the North Carolina Administrative Office of the Courts, to get more information from Tyler Technologies as to (1) what states have rules most like the North Carolina Rules of Civil Procedure; (2) how various electronic-filing issues, including the designated filing time, are handled in those states; (3) whether Tyler Technologies' system can verify a credit card number; and (4) whether there will be an option for issuing a summons electronically. Professor Anderson will also check with Mr. Fowler as to whether the AOC judicial fellows can help the CJRAC with research.

## **General Rules of Practice Subcommittee**

Mark Anderson, Subcommittee Chair, gave a brief report of the subcommittee's work.

### Other Issues Discussed:

- Whether the General Rules of Practice should be amended to say that local rules of practice cannot conflict with the electronic-filing system.
- Whether the North Carolina Business Court Rules will be merged into the General Rules of Practice upon the implementation of eCourts.
- The practical mechanics of electronic service need to be thoroughly considered—service needs to be seamless if, for example, a party's lawyer withdraws from the matter.
- The need to specify exceptions to electronic-filing requirements.
- The complexity of the effective dates of rule amendments, given that not all counties are going live with eCourts at the same time.

Kellie Myers and Judge Christine Walczyk agreed to serve on the General Rules of Practice Subcommittee, along with previously named subcommittee members Pamela Hill and Mark Holt.

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### **Next Steps and Schedule for Upcoming Commission Meetings**

Drafts of proposed rule amendments from both the Rules of Civil Procedure Subcommittee and the General Rules of Practice Subcommittee will be submitted to the full committee for its review, approximately one week prior to the January 10<sup>th</sup> meeting.

The CJRAC website will be up and running by the January 10<sup>th</sup> meeting.

An additional meeting date was set for Friday, February 7, 2020, 1:30 p.m. – 4:30 p.m. The meeting times for the January 10<sup>th</sup> and March 20<sup>th</sup> meetings were moved back 30 minutes to 1:30 p.m. – 4:30 p.m.

All meetings will be held at the Judicial Center in the Executive Boardroom, Room A1101.

### **Adjournment**

The meeting was adjourned at 4:45 p.m. by Judge Stroud.

**Minutes submitted by:** /s/ Grant E. Buckner  
Administrative Counsel, Supreme Court of North Carolina

**Date:** December 9, 2019